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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/634,111	08/04/2003	Peter Redinger	QC-0108 (1502-82)	6388
55825	7590	06/30/2006	EXAMINER	
CARTER, DELUCA, FARRELL & SCHMIDT, LLP 445 BROAD HOLLOW ROAD SUITE 225 MELVILLE, NY 11704			KOHARSKI, CHRISTOPHER	
			ART UNIT	PAPER NUMBER
			3763	

DATE MAILED: 06/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.		Applicant(s)	
	10/634,111		REDINGER, PETER	
	Examiner		Art Unit	
	Christopher D. Koharski		3763	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>12/22/03, 1/27/05</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Information Disclosure Statement

The information disclosure statements (IDS) that were submitted on 12/22/2003 and 1/27/2005 are in compliance with the provisions of 37 CFR 1.97. Accordingly, the examiner is considering the information disclosure statements.

Specification

The abstract of the disclosure is objected to because the abstract exceeds the 150 word maximum limit. Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 2 are rejected under 35 U.S.C 102(b) as being anticipated by Twardowski et al. (5,569,182). Twardowski et al. discloses a colt resistant multiple lumen catheter and method.

Regarding claims 1 and 2, Twardowski et al. discloses an elongated body with a first and second wall that define at least one lumen with a lateral opening and ridges extending therefrom (Figures 8-12).

Claim Rejections - 35 USC § 102

Claims 13-17 and 19-20 are rejected under 35 U.S.C 102(b) as being anticipated by Mahurkar (5,221,256). Mahurkar discloses a multiple-lumen catheter.

Regarding claims 13-17 and 19-20, Mahurkar discloses an elongated body with multiple ports, lumens, walls and ridges that extend from the walls such that distance of the ridges and lumens is configured to support a vessel wall in the manner claimed (Figure 18). The ridges all form an angle of less than 90 degrees with the walls that they extend from (Figure 18).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 3-8 and 10-12 are rejected under 35 U.S.C 103(a) as being unpatentable over Twardoski et al. in view of Mahurkar. Twardoski meets the claim limitations as described above but does not include ports and a third lumen.

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However, Mahurkar teaches a multiple-lumen catheter. Regarding claims 3-8 and 10-12, Mahurkar teaches an elongated body with multiple ports, lumens, walls and ridges that extend from the walls such that distance of the ridges and lumens is configured to support a vessel wall in the manner claimed (Figures 18-21).

At the time of the invention, it would have been obvious to use the additional lumens and side holes of Mahurkar with the system of Twardowski et al. because the addition of the additional lumen and the plural side holes allows for additional flow through the catheter and additional lumens for drug delivery. Moreover it would have been obvious to one having ordinary skill in the art at the time the invention was made to add additional lumens, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8 (CA7 1977).

Both references are analogous in the art and with the instant invention; therefore, a combination is proper. Therefore, one skilled in the art would have combined the teachings in the references in light of the disclosure of Mahurkar.

Claim Rejections - 35 USC § 103

Claims 9 and 18 are rejected under 35 U.S.C 103(a) as being unpatentable over Twardoski et al. in view of Mahurkar in further view of Spehalski (6,099,513). The modified Twardoski meets the claim limitations as described above but does not include multiple lateral elements.

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However, Spehalski teaches a wound drain with alternating perimetrically arranged lumens. Regarding claims 9 and 18, Spehalski teaches catheter with ridges and lateral channels (Figure 8).

At the time of the invention, it would have been obvious to use the ridges and lateral channels of Spehalski with the system of the modified Twardoski et al. because the addition of lateral channels allows for better flow through and along the catheter body. Both references are analogous in the art and with the instant invention; therefore, a combination is proper. Therefore, one skilled in the art would have combined the teachings in the references in light of the disclosure of Spehalski.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher D. Koharski whose telephone number is 571-272-7230. The examiner can normally be reached on Monday through Friday 7:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on 571-272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

6/22/06

[Date]

cdk

Christopher Koharski
Examiner
Art Unit 3763


NICHOLAS D. LUCCHESI
SUPERVISORY PATENT EXAMINER
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